



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

JUN - 2 2006

Mr. Anthony Izzo, General Manager
Enstar Natural Gas Company
P. O. Box 190288
401 East International Airport Road
Anchorage, AK 99519-0288

RE: CPF No. 5-2004-0006

Dear Mr. Izzo,

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It withdraws one of the allegations of violation, makes findings of violation, acknowledges receipt of partial penalty payment and assesses a total civil penalty of \$8,000 of which \$3,000 has already been paid by Respondent. The Final Order also finds that you have completed the actions specified in the Notice required to comply with the pipeline safety regulations, and that you have addressed the inadequacies in your procedures that were cited in the Notice of Amendment. The penalty payment terms are set forth in the Final Order. When the civil penalty is paid this enforcement action will be closed. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. §190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

cc: Mr. Chris Hoidal
Director, Western Region, OPS

Certified Mail Return-Receipt Requested

**DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

In the Matter of)	
)	
Enstar Natural Gas Company)	CPF No. 5-2004-0006
)	
Respondent.)	
)	

FINAL ORDER

Between July 2 and 8, 2003, pursuant to 49 U.S.C. §60117, representatives of the Western Region, Office of Pipeline Safety (OPS), conducted onsite pipeline safety inspections of Respondent's natural gas distribution facilities, manuals and records in Anchorage, Alaska. As a result of the inspection, the Director, Western Region, OPS, issued to Respondent, by letter dated February 23, 2004, a Notice of Probable Violation, Proposed Civil Penalty, Proposed Compliance Order, and Notice of Amendment (Notice).

In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent committed violations of 49 C.F.R. part 192, proposed assessing a civil penalty of \$14,000 for the alleged violations, and proposed ordering Respondent to take certain measures to correct the alleged violations. The Notice also proposed, in accordance with 49 C.F.R. § 190.237, that Respondent amend its Operating and Maintenance Procedures.

Respondent replied to the Notice by letter dated March 23, 2004 (Response). Respondent did not contest Items 1, 6 and 7 in the Notice. Respondent provided information regarding the corrective actions it has taken. Respondent performed a wire transfer in the amount of the proposed civil penalties (\$3,000) for these Items. Respondent contested Items 5 and 8 in the Notice, offered information in explanation of the allegations, provided information concerning the corrective actions it has taken, and proposed that the civil penalties be eliminated.

Respondent provided additional information concerning compliance and amendment of its procedures by letter dated April, 20 2004. Respondent formally requested a hearing by letter dated May 14, 2004. The hearing was held on May 4, 2005, at the OPS, Western Region Alaska District office in Anchorage, Alaska. After the hearing, Respondent submitted supporting documents presented at the hearing and a summary of comments on May 18, 2005.

FINDINGS OF VIOLATION

Uncontested

Respondent did not contest the violations alleged in Notice Items 1, 6, and 7. Accordingly, I find that Respondent violated the following sections of 49 C.F.R. Part 192, as more fully described in the notice.

- 1) 49 C.F.R. §192.199(h)—failing to secure the regulator station at the Fort Richardson Laundry facility from unauthorized operation.
- 6) 49 C.F.R. §192.479(a)—failing to take measures to prevent atmospheric corrosion on susceptible above ground equipment in the regulator/relief building at the East Anchorage regulator station and on the meter sets at the Manoogs Isle Trailer Park and the Diamond Trailer Park in Anchorage.
- 7) 49 C.F.R. §192.723—failing at the time of inspection, to provide leak survey records demonstrating that a leak survey had been conducted in the Anchorage business district, grid # A1931BD, for the 2002 calendar year.

Contested

Item 5 alleged Respondent violated 49 C.F.R. § 192.357(a), which requires Respondent to install customer meters and regulators so as to minimize anticipated stresses upon the connecting piping and the meter or regulator. The Notice alleged that Respondent did not take steps to minimize anticipated stresses when installing customer meter sets at some trailer parks. OPS personnel observed that meter sets at the Manoogs Isle and Diamond Trailer Parks in Anchorage were only supported by the riser pipe and that often, riser pipes were bent. Respondent reported that this condition was common in older trailer parks and that in the Manoogs Isle and Diamond parks, there were in excess of 1,000 unsupported meter sets.

In Respondent's March 23, 2004 response, it agreed that these meter sets could be better supported. Respondent further explained that it had not had any unusual problems with regulators and meters failing as a result of the established method of installation. Respondent noted that some of the risers have existed for up to 40 years and that OPS had inspected Enstar's distribution system before and not objected to these conditions. After the July, 2003 OPS inspection, Respondent initiated a program to refurbish and support the meter sets. Respondent's post-hearing comments, submitted on May 18, 2005, document the straightening, support and painting of 1144 trailer park meter sets. Respondent repaired the remaining 862 meter sets during the summer of 2005.

In Respondent's post-hearing comments, it restated its position that its installation of meters supported only by a riser pipe addresses all anticipated stresses as required by § 192.357(a). However, Respondent also noted its agreement with the OPS inspector that

the trailer court meter sets needed to be straightened, painted and their appearance generally improved.¹

Section 192.357(a) requires that meters are adequately supported at all times. Inadequately supported meters are more susceptible to damage and present an increased threat to public safety. Here, many of the riser pipes supporting Respondents meter sets were bent. This condition indicates a lack of proper support and is the type of unsafe situation that the regulation was designed to avoid. Respondent's assertion that it has never had a meter fail as a result of improper support does not negate this finding. Additionally, PHMSA is not precluded from taking enforcement action for a violation that was not identified during previous inspections. Therefore, I find that Respondent committed violation of §192.357(a).

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

WITHDRAWAL OF ALLEGATION

Notice Item 8 alleged that Respondent had violated 49 C.F.R. § 192.727(d), by failing to properly abandon its customer meter sets. When taking certain customer meter sets out of service, Respondent installed a locking device on the shut-off valve as the lone method of compliance with §192.727. In the Notice, OPS asserted that when a customer service meter is physically removed, in addition to locking the device, both ends of the piping must be sealed. In its response, Respondent asserted, that only one of those abandonment methods need be used in order to comply with the §192.727. I agree with Respondent. As a result, I am withdrawing this allegation of violation.

ASSESSMENT OF PENALTY

Under 49 U.S.C. §60122, Respondent is subject to an administrative civil penalty not to exceed \$100,000 per violation for each day of the violation up to a maximum of \$1,000,000 for any related series of violations.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

Item 1 proposed a civil penalty of \$1,000 for violation of §192.199(h). Respondent did not contest this item and paid the civil penalty in response to the Notice. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$1,000, already paid by Respondent.

¹ Respondent's letter, May 18, 2005, page 1.

Item 5 proposed a civil penalty of \$10,000 for violation of 49 C.F.R. §192.357(a), for not taking steps to minimize stresses on customer meter connecting piping. The proper support of customer meters and connecting piping is an important public safety requirement. Respondent should have realized that bent riser pipes on many of its customer meter sets indicated insufficient support. This condition threatened public safety and is the type of situation §192.357(a) was designed to prevent.

Respondent maintained that its program to fully support all meters in question demonstrated good faith in achieving compliance. Subsequent compliance does not negate past violation. Nonetheless, the circumstances surrounding the violation allow for mitigation of the proposed civil penalty. Part 192.357(a) is broadly worded and demands only “support” of meters, without specifying the nature of that support. After 40 years of installing meters only supported by the riser pipe, it is possible that Respondent was acting on a good faith belief that it had satisfied the regulatory requirements. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a reduced total civil penalty of \$5,000.

Item 6 proposed a civil penalty of \$1,000 for violation of §192.479(a). Respondent did not contest this item and paid the civil penalty in response to the Notice. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$1,000, already paid by respondent.

Item 7 proposed a civil penalty of \$1,000 for violation of §192.723. Respondent did not contest this item and paid the civil penalty in response to the Notice. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$1,000, already paid by respondent.

Item 8 proposed a civil penalty of \$1,000. Since this item is withdrawn, the proposed civil penalty is not assessed.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$8,000 of which \$3,000 has already been paid by Respondent.

Payment of the civil penalty must be made within 20 days of service. Payment may be made by sending a certified check or money order (containing the CPF Number for this case) payable to “U.S. Department of Transportation” to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-300), P.O. Box 25082, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this payment to be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-300), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$5,000 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a United States District Court

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically stays the payment of any civil penalty assessed. However if Respondent submits payment for the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived. The terms and conditions of this Final Order are effective on receipt.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Notice items 1, 5, 6 and 7. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. The Regional Director has indicated that Respondent has taken the following actions specified in the proposed Compliance Order to address the cited violations:

For Item 1 (violation of 49 C.F.R. §192.199), Respondent has secured the regulator station to protect it from unauthorized operation

For Item 5 (violation of 49 C.F.R. §192.357), Respondent has provided adequate meter support to the meter sets to prevent stresses on the connecting piping.

For Item 6 (violation of 49 C.F.R. §192.479), Respondent has coated exposed bolts within the regulator relief building and numerous meter sets with a material suitable for the prevention of atmospheric corrosion.

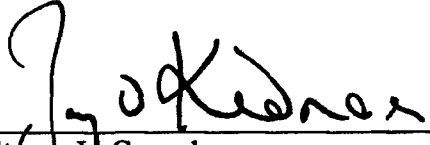
For Item 7 (violation of 49 C.F.R. §192.723), Respondent has provided leak survey reports for 2003 and 2004 that confirm completion of the surveys.

These actions comply with the requirements in Items 1, 5, 6 and 7 of this Order. Accordingly, since compliance has been achieved with respect to these violations, compliance terms are not included in this Order.

AMENDMENT OF PROCEDURES

Notice Items 2, 3, and 4 alleged that certain portions of Respondent's Operating Procedures were inadequate and proposed to require amendment of Respondent's procedures. In its response, Respondent submitted copies of its amended procedures,

which the Director, Western Region, OPS reviewed. Accordingly, based on the results of this review, I find that Respondent's original procedures as described in the Notice were inadequate to ensure safe operation of its pipeline system, but that Respondent has corrected the identified inadequacies. No need exists to issue an order directing amendment.



for
Stacey L. Gerard
Associate Administrator
for Pipeline Safety

JUN - 2 2006

Date Issued